

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Application of Bell Atlantic New Zealand) File No. 0002401623
Holdings, Inc., Assignor, and GTE Pacifica, Inc.,)
Assignee,)
for the Assignment of Personal Communications)
Service License WQCV808 (MTA 050))

ORDER

Adopted: October 27, 2006

Released: October 27, 2006

By the Acting Chief, Wireless Telecommunications Bureau, and the Acting Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we resolve the above-referenced application for assignment of a Personal Communications Services ("PCS") license from Bell Atlantic New Zealand Holdings, Inc. ("BANZHI") to GTE Pacifica, Inc. ("GTE Pacifica") (collectively, Applicants), and a petition to deny filed by TeleGuam Holdings, LLC ("TeleGuam").

II. BACKGROUND

A. The Application

2. The assignee, GTE Pacifica, is a provider of wireless telecommunications service in the Commonwealth of the Northern Mariana Islands ("CNMI"), using the 25 MHz cellular B-block license for CMA734, the CNMI market area.

1 See Application of Bell Atlantic New Zealand Holdings, Inc., Assignor, and GTE Pacifica, Inc., Assignee, for the Assignment of Personal Communications Service License WQCV808, File No. 0002401623, filed Dec. 7, 2005 ("Assignment Application"); Petition to Deny of TeleGuam Holdings, LLC, File No. 0002401623, filed Dec. 28, 2005 ("Petition to Deny").

2 See Assignment Application, Public Interest Statement and Description of Transaction ("Statement"), at 3-4; Joint Opposition to Petition to Deny, File No. 0002401623, filed Jan. 11, 2006 ("Joint Opposition"), at 2; Bell Atlantic New Zealand Holdings, Inc., Transferor, and Pacific Telecom Inc., Transferee; Applications for Consent to Transfer Control of a Submarine Cable Landing License, International and Domestic Section 214 Authorizations, a Cellular Radiotelephone License, Common Carrier and Non-Common Carrier Satellite Earth Station Licenses, and a Petition (continued...)

the common carrier MTC Interisland Cable System, an undersea fiber optic cable connecting the CNMI's three primary islands, Saipan, Tinian, and Rota, to Guam.³ GTE Pacifica is a wholly owned subsidiary of the Micronesian Telecommunications Corporation ("MTC"), which in turn is wholly owned by Pacific Telecom Inc. ("PTI").⁴

3. The assignor, BANZHI, is an indirect subsidiary of Verizon Communications Inc. ("Verizon") and was, prior to 2005 transaction, the sole parent of MTC and thus the indirect parent of GTE Pacifica.⁵ In 2005, as discussed in detail below, BANZHI sold MTC and GTE Pacifica to PTI, but first re-assigned one broadband PCS license held by GTE Pacifica to itself, specifically the license at issue in this proceeding.

4. On December 7, 2005, BANZHI and GTE Pacifica submitted the pending application seeking consent to assign the broadband PCS license from BANZHI back to GTE Pacifica.⁶ The license at issue is station WQCV808, the 30 MHz A-Block PCS license for the Guam-Northern Mariana Islands Major Trading Area (MTA), MTA 050.⁷ GTE Pacifica currently provides facilities-based wireless service solely in the CNMI; the MTA 050 license assignment would therefore allow it to expand its licensed service area to Guam.⁸

5. The proposed assignment is the last part of a larger transfer of control of GTE Pacifica's parent, MTC. On November 3, 2003, the Commission approved the transfer of control of MTC (including its subsidiary, GTE Pacifica) from MTC's then-parent BANZHI to PTI.⁹ Subsequent to that approval but prior to the actual transfer of control, on June 7, 2005, the Commission awarded the MTA 050 license to GTE Pacifica as a result of GTE Pacifica's high bid in Auction No. 58.¹⁰ Although the Commission had approved the transfer of control of MTC, this approval was limited to those licenses held by MTC and GTE Pacifica at the time of the approval, and so did not cover the MTA 050 license won in Auction No. 58.¹¹ A separate application was therefore filed to obtain approval to include the MTA 050 license in the larger transfer of control over MTC and GTE Pacifica.¹² The application was withdrawn, however, "when it became apparent that the parties would be unable to secure the necessary [Commission] approval in time for a closing date set by the local CNMI regulator for the sale of MTC

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for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, IB Docket No. 03-115, *Order and Authorization*, 18 FCC Rcd 23140, 23142-43 ¶ 3 (2003) ("*BANZHI-PTI Order*").

³ *BANZHI-PTI Order*, 18 FCC Rcd at 23142-43 ¶ 3; *see also* Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc., Joint Application for Transfer of Control of Cable Landing License, IB Docket No. 03-115, File No. SCL-T/C-200030418-00008 (filed April 18, 2003) ("*Submarine Cable Application*") at 2-3.

⁴ *See* Statement at 1; Ownership Update at 1-2.

⁵ *See* Statement at 1; Submarine Cable Application at 2 (explaining that Verizon owns 100% of the outstanding BANZHI common stock through a series of wholly owned subsidiaries).

⁶ *See* Statement at 1-2.

⁷ *Id.* at 1.

⁸ *See id.* at 2-3; *see also* Joint Opposition at 2.

⁹ *See, generally, BANZHI-PTI Order.*

¹⁰ *See* Statement at 1; Public Notice, "Wireless Telecommunications Bureau Grants Broadband Personal Communications Services (PCS) License," WT Docket No. 05-149, 20 FCC Rcd 10119 (Wireless Tel. Bur. 2005) (granting GTE Pacifica's long-form application for license WQCV808).

¹¹ Statement at 1.

¹² *See id.*

from BANZHI to PTI.”¹³ To complete the MTC transfer by the established closing date, the parties instead reassigned the MTA 050 license from GTE Pacifica to BANZHI.¹⁴ The sale of MTC to PTI, including GTE Pacifica without the MTA 050 license, was consummated on September 20, 2005.¹⁵

6. The Applicants now seek Commission consent to the assignment of the MTA 050 license from BANZHI back to GTE Pacifica. They assert that grant of the pending application will accelerate deployment of wireless communications in the Guam market and provide additional opportunities to develop GTE Pacifica’s work force through the construction of a new wireless network.¹⁶ They further state that “grant of the application . . . will promote competition by introducing a new wireless operator” in Guam and by enabling GTE Pacifica to take advantage of economies of scale.¹⁷ The additional spectrum will also allegedly enable GTE Pacifica “to offer a wider range of services, such as wireless data, in response to consumer demand.”¹⁸

7. The Applicants note that PTI is “100 percent non-U.S. owned” and that the Commission must therefore make a determination, pursuant to section 310(b)(4) of the Act, that the proposed ownership is not inconsistent with the public interest.¹⁹ They argue that the Commission has already determined that PTI’s indirect foreign ownership of GTE Pacifica is consistent with the public interest in the *BANZHI-PTI Order*, which approved the transfer of control of MTC and GTE Pacifica to PTI.²⁰ The Applicants submit that no new foreign ownership issues are raised by the pending application and that the Commission’s previous section 310(b)(4) finding applies to the license at issue in this proceeding. In a filing on August 18, 2006, they do note that the indirect ownership of GTE Pacifica has partly changed because Sumitomo Corporation, a Japanese corporation, has recently purchased a 25% interest in PTI.²¹ They argue, however, that this investment “is fully consistent” with the foreign ownership ruling issued in the *BANZHI-PTI Order*.²² Specifically, they argue that the *BANZHI-PTI Order* expressly permits PTI to accept up to and including an aggregate 25% indirect equity and/or voting interest from other foreign investors without obtaining prior Commission approval.²³

8. Finally, in an amendment to the original application, the Applicants request that we condition grant of the application on GTE Pacifica’s compliance with the terms of the October 6, 2003 network security agreement between MTC and PTI, and the U.S. Department of Justice, Federal Bureau of Investigation, U.S. Department of Defense, and the U.S. Department of Homeland Security.²⁴

9. On December 14, 2005, the Wireless Telecommunications Bureau put the application out

¹³ *Id.* at 1-2.

¹⁴ *See id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 3; *see also* Joint Opposition at 2.

¹⁸ Statement at 3.

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ *See* Ownership Update at 1.

²² *Id.*

²³ *Id.* (citing *BANZHI-PTI Order*, 18 FCC Rcd at 23153 ¶ 28).

²⁴ *See* August 9 Amendment at Ex. B.

for public notice.²⁵ On December 28, 2005, TeleGuam filed a petition to deny the application.²⁶ The Applicants filed a Joint Opposition to the Petition to Deny on January 11, 2006, and TeleGuam filed a Reply on January 24, 2006.²⁷

B. Petition to Deny

10. TeleGuam provides local and long distance telecommunications service in Guam, and recently began offering wireless services in Guam through its wholly owned subsidiary, Pulse Mobile LLC.²⁸ TeleGuam asserts that assignment of the WZCV808 license to GTE Pacifica will have an adverse impact on competition.²⁹ TeleGuam states that, if GTE Pacifica is allowed to acquire the MTA 050 license, it would “actively participate in both the Guam and CNMI markets, while also retaining the only optic facility that links those markets.”³⁰ TeleGuam argues that GTE Pacifica can then use its control of this “bottleneck” facility to “confer preferred status” on itself as a new Guam competitor in the wireless services market.³¹ TeleGuam suggests that “[a]t only a nominal cost to itself,” GTE Pacifica “would be able to offer its customers wireless service throughout MTA 050 . . . while other providers on Guam would be forced to pay exorbitant rates to connect their Guam customers with CNMI, or to offer service in CNMI out of Guam facilities.”³² TeleGuam asserts that GTE Pacifica’s “ability to place an ‘iron curtain’” between Guam and the CNMI is not just “hypothetical,” and points to GTE Pacifica’s current cable rate of approximately \$200,000 per month for DS3 capacity as evidence.³³ TeleGuam asserts that such a DS3 rate “exists to prevent competition, not to generate revenue.”³⁴ TeleGuam therefore requests that the Commission deny the application until GTE Pacifica publishes “reasonable DS3 rates” between Guam and the CNMI.³⁵

11. In their Joint Opposition, the Applicants deny that the undersea cable is a “bottleneck” facility, arguing that customers were able to communicate between the islands prior to the construction of the cable, and they maintain that TeleGuam could use alternatives such as satellite or microwave link.³⁶ They argue that TeleGuam’s interest in a DS3 connection for wireless traffic is in any case a “red herring” because TeleGuam has no market share and therefore no reason to order that much capacity.³⁷ The

²⁵ See Public Notice, “Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications Accepted For Filing,” Report No. 2338 (rel. Dec. 14, 2005).

²⁶ See Petition to Deny.

²⁷ See Joint Opposition; Reply to Joint Opposition to Petition to Deny, File No. 0002401623, filed Jan. 24, 2006 (Reply).

²⁸ See Petition to Deny at 2.

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ See *id.* at 3-4.

³² *Id.* at 3.

³³ *Id.* at 3 (citing <http://www.pticom.com/tariffs/plgfc.pdf>). Digital Signal-3 (“DS3”) capacity is the equivalent of 28 T-1 channels, each operating at a total signaling rate of 1.544 Mbps. DS3 thus supports 672 voice-grade channels of 64 Kbps each. See Harry Newton, Newton’s Telecom Dictionary 242 (18th ed. 2002).

³⁴ See Petition to Deny at 3.

³⁵ See *id.* at 4; Reply at 4-5.

³⁶ See Joint Opposition at 3-4.

³⁷ See *id.* at 4.

Applicants also assert that “the CNMI/Guam wireless market is flourishing” and that competition is “extensive.”³⁸ In particular, they argue that TeleGuam’s claim regarding the impact of the cable charges on inter-island service “is belied by the fact that several carriers . . . already offer wireless rate plans that provide service between Guam and the CNMI with no long distance charges.”³⁹

III. DISCUSSION

A. Statutory Authority

12. Pursuant to section 310(d) of the Communications Act, we must determine whether the proposed assignment will serve the public interest, convenience, and necessity.⁴⁰ We therefore weigh the potential public interest benefits of the proposed transaction against the potential public interest harms to ensure that, on balance, the assignment serves the public interest and convenience.⁴¹ Our analysis considers in particular the likely competitive effects of the proposed assignment, and whether the assignment raises significant anti-competitive issues.⁴² In addition, because of the foreign ownership interests in PTI, we must also determine whether the proposed assignment to GTE Pacifica comports with the foreign ownership provisions of section 310 of the Act.⁴³

B. Qualifications of Applicants

13. As a threshold matter, the Commission must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules.⁴⁴ In making this determination, the Commission does not, as a general rule, re-evaluate the qualifications of assignors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁴⁵ No issue has been raised with regard to BANZHI’s qualifications and we therefore do not further evaluate them.

14. Section 310(d) requires, however, that we consider whether the proposed assignee is qualified to hold a Commission license.⁴⁶ We note that the Commission already made a determination following Auction No. 58 that GTE Pacifica is qualified to hold the MTA 050 license.⁴⁷ In light of that

³⁸ *Id.* at 4-5.

³⁹ *Id.* at 5 (emphasis omitted).

⁴⁰ 47 U.S.C. § 310(d).

⁴¹ Applications of Ameritech Corp., Transferor, and SBC Communications Inc., CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14736 ¶ 46 (1999).

⁴² *BANZHI-PTI Order*, 18 FCC Rcd at 23145 ¶ 9; *see also* Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21564 ¶ 95 (2004) (“*Cingular-AT&T Wireless Order*”) (stating that the Commission’s merger analysis would consider “whether there is a substantial likelihood that the merger will result in anticompetitive effects, such as higher prices, reduced features in a given service plan, slower rollout of advanced network availability, or reduced incentives for innovation.”).

⁴³ 47 U.S.C. § 310 (a), (b).

⁴⁴ *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁴⁵ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁴⁶ *See id.*

⁴⁷ *See* Public Notice, “Wireless Telecommunications Bureau Grants Broadband Personal Communications Services (PCS) License,” WT Docket No. 05-149, 20 FCC Rcd 10119 (Wireless Tel. Bur. 2005) (granting MTA 050 license to GTE Pacifica); 47 U.S.C. § 309(j)(5) (“No license shall be granted to an applicant selected pursuant to this

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determination, as well as the conclusion in the *BANZHI-PTI Order* that PTI had the requisite qualifications to operate GTE Pacifica,⁴⁸ and in the absence of any challenge to the basic qualifications of GTE Pacifica or the companies that control it, we conclude that GTE Pacifica is legally and otherwise qualified to acquire control of the MTA 050 license.

C. Foreign Ownership Review

15. In this section, we address issues relevant to our public interest inquiry under the foreign ownership provisions of section 310 of the Act. Section 310(b)(4) of the Act establishes a 25% benchmark for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio licensees.⁴⁹ This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest. The Applicants argue that the foreign ownership of PTI, the ultimate U.S. parent of GTE Pacifica, has already been found to be consistent with the public interest under section 310(b)(4) in the *BANZHI-PTI Order*, which approved the transfer of control of GTE Pacifica to PTI.⁵⁰ They further argue that the recent 25% indirect investment in GTE Pacifica by Sumitomo Corporation is “fully consistent” with that ruling, and that the Commission’s previous section 310(b)(4) finding therefore applies to the assignment at issue in this proceeding.⁵¹

16. Based on the record before us, and as discussed below, we find that the foreign ownership of PTI falls within the parameters of the foreign ownership ruling issued to GTE Pacifica in the *BANZHI-PTI Order*. In addition, we find that the assignment application does not raise any new foreign ownership issues. We therefore conclude, pursuant to section 310(b)(4) of the Act, that it would not serve the public interest to deny the assignment application because of the indirect foreign ownership interests that are held in GTE Pacifica through PTI, its U.S. parent company.⁵² In addition, we grant GTE

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subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310.”).

⁴⁸ See *BANZHI-PTI Order*, 18 FCC Rcd at 23145 ¶ 11.

⁴⁹ See 47 U.S.C. § 310(b)(4) (providing that “[n]o broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by... any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”).

⁵⁰ See Statement at 4.

⁵¹ See *id.*; August 18 Amendment at 1.

⁵² The proposed assignment of license does not raise foreign ownership issues under section 310(a) or (b)(1)-(3) of the Act. Section 310(a) of the Act prohibits any radio license from being “granted to or held by” a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative will hold the license. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or en route radio licenses from being “granted to or held by” aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative, or foreign corporation will hold the common carrier license in this case. Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)-(2) of the Act. See *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd 9779, 9804-9809 ¶¶ 38-48 (2001). Additionally, because the foreign investment in GTE Pacifica is held in its controlling U.S. parent company, PTI, the proposed assignment does not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast and aeronautical fixed or en route Title III licenses. Compare 47 U.S.C. § 310(b)(3) with § 310(b)(4). See *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections*

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Pacifica's request that we condition grant of the assignment application on its compliance with the terms of the October 6, 2003, network security agreement between MTC and PTI on the one hand, and the Federal Bureau of Investigation, the U.S. Department of Justice, the U.S. Department of Defense, and the U.S. Department of Homeland Security (collectively, the "Executive Branch Entities") on the other.

17. As discussed in Section II.A., GTE Pacifica is wholly owned by MTC, which, in turn, is wholly owned by PTI. Each of these companies is organized under the laws of the CNMI.⁵³ PTI is majority-owned (75%) by Prospector Investments Ltd. ("Prospector"), a company organized under the laws of the Cayman Islands, British West Indies. Prospector is owned by two related individuals: (1) Ricardo C. Delgado, a citizen of the Philippines, holds a 60% equity and voting interest in Prospector; and (2) Jose Ricardo Delgado, also a citizen of the Philippines, holds a 40% equity and voting interest in Prospector.⁵⁴ The remaining 25% ownership interest in PTI is held by Sumitomo Corporation, a company organized under the laws of Japan.⁵⁵

18. At the time of the *BANZHI-PTI Order*, Prospector owned 100% of the equity and voting interests in PTI.⁵⁶ The foreign ownership ruling issued in that proceeding permits GTE Pacifica to be owned indirectly by "Prospector (up to and including 100[%] of the equity and voting interests) and by Prospector's shareholders Ricardo C. Delgado (up to and including 60[%] of the equity and voting interests) and Jose R. Delgado (up to and including 40[%] of the equity and voting interests)."⁵⁷ Thus, Prospector's current 75% equity and voting interests in PTI (and the respective equity and voting interests held in Prospector by the Delgado's, which remain unchanged) fall within the parameters of GTE Pacifica's existing foreign ownership ruling.

19. The 25% equity and voting interests acquired directly in PTI by Sumitomo Corporation as of July 31, 2006 also complies with the terms of the foreign ownership ruling. In accordance with our usual policy, the ruling permits PTI "to accept up to and including an aggregate 25% indirect equity and/or voting interest from other foreign investors without obtaining prior Commission approval under section 310(b)(4) of the Act."⁵⁸ Because Sumitomo Corporation's equity and voting interests in PTI do not exceed 25%, and no other foreign individual or entity holds a direct or indirect equity or voting interest in PTI,⁵⁹ we find that PTI's current foreign ownership complies with GTE Pacifica's existing foreign ownership ruling. Accordingly, GTE Pacifica continues to be entitled to a rebuttable presumption that its indirect foreign ownership does not pose a risk to competition in the U.S. market.⁶⁰

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310(b)(3) and (4) of the Communications Act of 1934, as amended, Declaratory Ruling, FCC 85-295, 103 F.C.C. 2d 511 (1985) ("*Wilner & Scheiner I*"), *recon. in part*, FCC 86-406, 1 FCC Rcd 12 (1986).

⁵³ See Ownership Update at 2.

⁵⁴ See *id.*

⁵⁵ See *id.* at 1-2.

⁵⁶ See *BANZHI-PTI Order*, 18 FCC Rcd at 23143 ¶ 4.

⁵⁷ *Id.* at 23153 ¶ 28.

⁵⁸ *Id.* at 23153 ¶ 28.

⁵⁹ See Ownership Update at 1 n.3.

⁶⁰ We found in the *BANZHI-PTI Order* that Prospector is entitled to a rebuttable presumption that its ownership of PTI does not pose competition concerns because Prospector's principal place of business is in the Philippines, a World Trade Organization ("WTO") Member country. See *id.*, 18 FCC Rcd at 23152-53 ¶¶ 25-26; see also *id.* at 23151 ¶ 23 (citing *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23896 ¶ 9, 23913 ¶ 50, 23940 ¶¶ 111-12 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000)).

We find no evidence in the record that rebuts this presumption and, as we explain in Section III.E. below, we find no basis to conclude that the assignment of the subject broadband PCS license to GTE Pacifica is likely to harm competition.⁶¹

20. When analyzing a transfer of control or assignment application, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by foreign investment in an applicant.⁶² In assessing the public interest, we consider the record and accord the appropriate level of deference to Executive Branch expertise on these issues.⁶³ GTE Pacifica requests that we condition grant of the pending assignment application on its compliance with the terms a network security agreement between MTC and PTI and the Executive Branch Entities dated October 6, 2003 (the “Executive Branch Agreement” or “Agreement”), pursuant to Section 7.2 of that Agreement.⁶⁴ In the *BANZHI-PTI Order*, we conditioned grant of the transfer applications and petition for declaratory ruling filed by PTI in that proceeding on compliance with the provisions of the Executive Branch Agreement.⁶⁵ As we explained in the *BANZHI-PTI Order*, the Executive Branch Agreement and our conditioning of the grant of PTI’s transfer applications and petition for declaratory ruling addressed the national security, law enforcement, and public safety concerns that the Executive Branch raised in that proceeding.⁶⁶ In accordance with the condition imposed in the *BANZHI-PTI Order* and given the request of GTE Pacifica, we condition our grant of the pending assignment application on the assignee’s compliance with the Executive Branch Agreement.⁶⁷

D. Public Interest Benefit Analysis

21. To determine whether, on balance, the assignment serves the public interest and convenience, we first examine the potential public interest benefits of the assignment. Most significantly, assignment of the MTA 050 license to GTE Pacifica will introduce a new facilities-based wireless competitor into the Guam market.⁶⁸ Conversely, if the application is denied, the license will likely lie fallow in both Guam and the CNMI for a significant period of time because BANZHI no longer has any assets in either market following the sale of MTC to PTI.⁶⁹ Thus, granting the application will provide the public with both more competition and more efficient use of spectrum. We also find that enabling GTE Pacifica to operate facilities-based wireless service in both Guam and the CNMI will likely produce other benefits, such as added economies of scale.

⁶¹ See *infra* ¶¶ 23-31.

⁶² See *Foreign Participation Order*, 12 FCC Rcd at 23918-21 ¶¶ 59-66.

⁶³ See *BANZHI-PTI Order*, 18 FCC Rcd at 23159 ¶ 41 (citing *Foreign Participation Order*, 15 FCC Rcd at 23919-21 ¶¶ 61-66).

⁶⁴ See August 9 Amendment. Section 7.2 of the Agreement provides, *inter alia*, that “MTC agrees that, in any application or petition by any Domestic Communications Company to the FCC for licensing or other authority filed with or granted by the FCC after the Effective Date, except with respect to *pro forma* assignments or *pro forma* transfers of control, the Domestic Communications Company shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement.” The term “Domestic Communications Company” is defined in Section 1.11 of the Executive Branch Agreement, which is appended to the *BANZHI-PTI Order* as Appendix B, 18 FCC Rcd at 23166-23200.

⁶⁵ See *BANZHI-PTI Order*, 18 FCC Rcd at 23158-60 ¶¶ 38-43, 23163 ¶ 53.

⁶⁶ See *id.* at 23160 ¶ 42.

⁶⁷ See *infra* ¶ 34.

⁶⁸ See Statement at 3; Joint Opposition at 2 (“Grant of the above-referenced assignment application would permit Pacifica to introduce more facilities-based competition into the much larger Guam market. . .”).

⁶⁹ Joint Opposition at 2.

22. In addition, we note that the *BANZHI-PTI Order* found that the transfer of MTC, including GTE Pacifica, from BANZHI to PTI would “likely yield public interest benefits because [PTI] plans to provide expanded and innovative telecommunications services to consumers in the CNMI and to invest in equipment and infrastructure.”⁷⁰ As an example, PTI indicated that it would “introduce third generation wireless services” and “increase the capacity and coverage of wireless services”⁷¹ We find it equally likely that assignment of the 30 MHz PCS license to GTE Pacifica will further contribute to the realization of these benefits, both in Guam and the CNMI.

E. Competitive Harm Analysis

23. We now consider the extent to which the proposed assignment presents a risk of harm to competition. Analysis of a transaction’s impact on competition considers both horizontal issues (those related to increased concentration within a market) and vertical issues (those related to impacts across related markets).⁷² When reviewing horizontal issues in the context of transfers of spectrum between wireless carriers, the Commission has started its review by analyzing the extent to which the transfer results in either an increase in market concentration or an increase in spectrum concentration.⁷³ We find that neither of these considerations presents any significant risk of competitive harm. BANZHI does not currently provide mobile telephony service in either Guam or the CNMI, and given its lack of assets in either market other than the license itself, it is unlikely that it will do so in the near term.⁷⁴ Therefore, the license assignment will not result in any increase in market concentration. Further, while the assignment will increase GTE Pacifica’s spectrum holdings, the Commission has established that a transaction resulting in holdings of less than 70 MHz is unlikely to result in competitive harms.⁷⁵ Here, the assignment of the 30 MHz PCS license will provide GTE Pacifica with only the license itself in Guam and a total holding of only 55 MHz in the CNMI. Therefore, we find that spectrum aggregation by GTE Pacifica as a result of this transaction is unlikely to result in competitive harms.⁷⁶ We also note that TeleGuam, in its Petition to Deny, does not allege any risk of harm resulting from horizontal effects.

24. We therefore turn to the potential vertical harms to competition.⁷⁷ Specifically, we

⁷⁰ See *BANZHI-PTI Order*, 18 FCC Rcd at 23160 ¶ 44.

⁷¹ *Id.*

⁷² See Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13980 ¶ 27, 13982 ¶ 35 (2005) (*Sprint-Nextel Order*); Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13066 ¶ 22 (2005) (*WWC-ALLTEL Order*); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68.

⁷³ *WWC-ALLTEL Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69 (“Transactions that do not significantly increase [market] concentration or do not result in a concentrated market ordinarily require no further competitive analysis (although we separately consider the spectrum holdings that would occur post-merger).”). See also *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31.

⁷⁴ See Joint Opposition at 2-3.

⁷⁵ See *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 65; *WWC-ALLTEL Order*, 20 FCC Rcd at 13074 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶ 109.

⁷⁶ See Statement at 3-4.

⁷⁷ Vertical harms may result when a firm participates in one or more successive stage of the production or distribution of goods or services. See DENNIS W. CARLTON & JEFFREY M. PERLOFF, *MODERN INDUSTRIAL ORGANIZATION* 741(3rd ed. 1999). Currently, GTE Pacifica is vertically integrated in the CNMI through its ownership of the submarine cable that links the CNMI and Guam and its provision of mobile telephony services in the CNMI.

consider TeleGuam's assertion that, if GTE Pacifica is assigned the MTA 050 license and thus authorized to operate in Guam as well as the CNMI, it will be in a position to gain an anti-competitive advantage over its wireless competitors by charging them unreasonable rates to transport their traffic between Guam and the CNMI.⁷⁸ TeleGuam indicates that GTE Pacifica can use its cable transport charges to obtain an anti-competitive advantage in two ways: first, by raising the cost for its Guam competitors to connect their subscribers to parties in the CNMI; and second, by making it prohibitively expensive for other mobile telephony carriers to provide facilities-based service in both Guam and the CNMI with a more efficient single-switch architecture.⁷⁹

25. After reviewing TeleGuam's arguments and the record, however, we conclude that permitting GTE Pacifica to offer mobile telephony service in both Guam and the CNMI while providing the only inter-island cable transport presents a minimal risk of harm to competition.⁸⁰ As discussed in detail below, we find that TeleGuam has not demonstrated that the cable rates are unreasonable, or that these rates have prevented carriers from transporting inter-island traffic on a basis that is competitive with GTE Pacifica. Further, while TeleGuam warns that permitting GTE Pacifica to provide both mobile telephony and inter-island transport service in Guam will adversely impact competition there, we note that GTE Pacifica already provides both in the CNMI, and competition in that market is thriving. In addition, we find that GTE Pacifica's theory of competitive harm regarding the use of a one-switch architecture is speculative. Accordingly, we conclude that there is no significant risk that proposed assignment will have an adverse effect on mobile telephony competition in either Guam or the combined Guam/CNMI market.

26. We find, first, that TeleGuam's assertion that GTE Pacifica's cable rates are unreasonable does not demonstrate a significant risk of harm to competition because TeleGuam has not adequately supported this claim. TeleGuam has not provided any evidence of the unreasonableness of the cable rates other than simply reciting the approximately \$200,000 per month rate for DS3 capacity transport. For example, there is no evidence in the record comparing rates for this undersea cable with other undersea cable rates on a line-capacity basis, nor is there any evidence of the costs associated with the building and maintenance of the cable that would demonstrate that the rates are unjust or unreasonable or that they

⁷⁸ Applicants note that "TeleGuam did not oppose the initial grant of the WQCV808 license to Pacifica in June 2005 [after Pacifica's winning bid in Auction No. 58], when the same market conditions applied but Pacifica was part of Verizon." Joint Opposition at 3. We place no weight, however, on the absence of TeleGuam's opposition to the result of Auction No. 58. Had TeleGuam filed such an opposition, it would have been subject to dismissal for lack of standing. Under Commission precedent, "an entity that was not qualified to bid in particular markets in an auction [e.g., because it did not file the proper application] has no standing to file a petition to deny the winning bidders' applications in those markets." Alaska Native Wireless, L.L.C., *Order*, 18 FCC Rcd 11640, 11644 ¶ 11 (2003). Because TeleGuam did not apply to bid on Auction No. 58, it could not have raised objections to its results.

⁷⁹ Petition to Deny at 3.

⁸⁰ In reaching our conclusion, we have assumed for purposes of this proceeding that there are no competitive alternatives to GTE Pacifica's undersea cable. While the Applicants assert that satellite and microwave links provide competitive alternatives to the cable for inter-island transport, the Commission has already found that "[b]ecause of the number of tropical storms and typhoons that strike the islands, these existing [microwave and satellite] systems are vulnerable to disruption and poor-quality transmission" and that a submarine cable provides "more-reliable, higher-quality service to those islands." *GST Telecom, Inc.*, 12 FCC Rcd 3608, 3611 ¶ 12 (1997) ("*GST Telecom Order*"); see also Micronesian Telecommunications Corporation Application For Authority Under Section 214 of the Communications Act of 1934, As Amended, to Construct and Operate the MTC Interisland Cable Between the Commonwealth of the Northern Mariana Islands and Guam, *Memorandum Opinion, Order and Authorization*, 8 FCC Rcd 750, 751 ¶ 7 (Com. Car. Bur. 1993) ("*MTC Interisland Cable Section 214 Order*") (noting that the MTC Interisland Cable "will improve service because the current analog microwave system is more susceptible to tropical storms and typhoons . . ."). TeleGuam further states that satellite in particular is not a reasonable alternative for voice service because of the time delay, Reply at 3, and the Applicants concede that satellite service "is not a perfect substitute to cable transport . . ." Joint Opposition at 3.

have been set to stifle competition. For similar reasons, the record lacks sufficient evidence for us to determine what a “reasonable” rate would be. Thus, there is inadequate basis in the record for concluding that the current cable rates are unreasonable, or for requiring GTE Pacifica to adopt different rates as a condition of assignment.

27. In addition, we find that the cable charges have had a very limited impact on wireless rates in both Guam and the CNMI, further arguing against a conclusion that the cable charges are unreasonable or present a significant risk of harm to competition. Because the cable charges are incurred solely to enable inter-island traffic, one would expect the wireless rates for such inter-island calls to reflect the cable charges if these charges were truly “exorbitant.” As the Applicants note (and TeleGuam does not dispute), however, carriers in Guam and the CNMI have not imposed any long distance charges for inter-island calls. Instead, carriers currently include both Guam and the CNMI in their home calling areas (*i.e.*, both intra-island and inter-island calls are treated as “local” calls).⁸¹ Further, even assuming that wireless carriers are averaging the additional transport costs for inter-island calls across all of their local calls, the result has not raised their local rates significantly beyond GTE Pacifica’s own rates.⁸² Thus, the record reflects that carriers in Guam and the CNMI are able to transport traffic between the islands on a basis that is both cost-effective and competitive with GTE Pacifica, supporting the conclusion that GTE Pacifica’s cable charges are unlikely to adversely affect competition.

28. Moreover, if the cable charges GTE Pacifica imposes on Guam carriers were sufficiently high to provide GTE Pacifica an anti-competitive advantage in Guam if it is licensed to serve there, we would expect to see an adverse impact on existing competition in the CNMI, where GTE Pacifica is licensed already. Just as Guam mobile telephony carriers incur GTE Pacifica’s cable charges to connect their subscribers to the CNMI, CNMI carriers incur these same cable charges to connect their subscribers to Guam. Because GTE Pacifica competes in the CNMI as a mobile telephony carrier, it is already in a position to take advantage of the allegedly unreasonable cable charges by undercutting and eliminating its CNMI competitors. We find, however, that competition in the CNMI is thriving, with four other mobile telephony carriers currently competing with GTE Pacifica to offer facilities-based service in one or more of the islands of the CNMI.⁸³ Because GTE Pacifica’s cable rates have not adversely affected mobile telephony competition in the CNMI, where GTE Pacifica is already licensed, we find no significant likelihood that the cable charges will adversely affect such competition in Guam should GTE Pacifica be licensed in that area.⁸⁴

29. TeleGuam counters that the cable rates have impacted basic air charges in an indirect fashion that GTE Pacifica can exploit only if it is authorized to provide service in both the Guam and

⁸¹ See Joint Opposition at 5 & Attachments A, B, C.

⁸² For example, GTE Pacifica offers a plan at thirty nine dollars per month providing 260 minutes, with a twenty-eight cent charge for each additional minute. See http://www.pticom.com/postpaid_cell.cfm. By comparison, IT&E Wireless (which services both Guam and the CNMI) offers a plan for the same thirty-nine dollar per month amount providing 500 peak minutes and unlimited off-peak minutes, with a thirty cent charge for each additional minute. See <http://www.itepcs.net/plans/plans.php>.

⁸³ In addition to GTE Pacifica, facilities-based competitors in the CNMI include Guam Cellular & Paging dba Saipancell, see <http://www.saipancell.com>, IT&E Wireless, see <http://www.itepcs.net>, I-Connect, see <http://www.iconnectguam.com>, and Guam Wireless Telephone Company dba Hafatel. See also “Stimulating Investment in the CNMI: Marianas Roundtable,” <http://www.saipanchamber.com/newsletters/29.pdf>, at 23 (noting, as of May 2005, five wireless carriers in the CNMI with a sixth planning service in the near future).

⁸⁴ See also “Stimulating Investment in the CNMI: Marianas Roundtable,” <http://www.saipanchamber.com/newsletters/29.pdf>, at 23 (characterizing both wireless and wireline competition in the CNMI as “intense” and concluding that the result has been “lower prices, additional and improved services, and better flexible packages of communications services to meet customer requirements.”).

CNMI markets. TeleGuam asserts that the cable charges have made basic airtime charges higher because they have made it infeasible for carriers providing service in both Guam and the CNMI to use a single switch to service both markets, and have thus forced them to recover the cost of maintaining two switches in their rates.⁸⁵ Although TeleGuam does not say so explicitly, it implies that GTE Pacifica, if licensed in both Guam and the CNMI, will adopt the single-switch architecture that it has allegedly prevented its competitors from using, thus gaining an anti-competitive advantage.

30. We note again, however, that TeleGuam has not adequately demonstrated that the cable charges are unreasonable, and therefore, we are not persuaded that these charges will give GTE Pacifica an anti-competitive advantage, either directly or indirectly. In addition, we find TeleGuam's argument here to be speculative. It is unclear on the record what impact the cable rates have on the feasibility of a one-switch solution. Indeed, TeleGuam implies that some of the carriers currently serving both Guam and the CNMI⁸⁶ have already adopted a one-switch solution notwithstanding the cable rates.⁸⁷ It is likewise unclear to what extent a one-switch solution would provide a competitive advantage, or even whether any carrier serving both markets that has not already moved to a one-switch architecture would adopt such a solution in the event that cable rates were lower. Although TeleGuam expresses interest in using one switch to serve both Guam and the CNMI, we note that it currently is licensed only in Guam and could not, at present, directly provide facilities-based service in the CNMI using any form of wireless architecture.⁸⁸ TeleGuam also fails to demonstrate that it could not implement its single-switch solution with less than DS3 capacity, and we note that rates for smaller amounts of capacity are proportionately less than the approximately \$200,000 for a DS3.⁸⁹ In short, we find on this record that the indirect impact of the cable rates, if any, presents an even smaller risk of harm to wireless competition than the direct impact.

31. Finally, we emphasize that the approval of the assignment application does not foreclose TeleGuam from obtaining relief if it can demonstrate that the undersea cable rates are, in fact, unreasonable. Because GTE Pacifica's inter-island cable transport is a common carrier service,⁹⁰ TeleGuam can still raise a claim that the rates for DS3 capacity are unjust and unreasonable through a section 208 complaint alleging a violation of section 201(b) of the Act.⁹¹ Such a remedy will adequately protect the public interest from any anti-competitive concerns without denying the public the substantial benefits of the assignment.

⁸⁵ See Reply at 4.

⁸⁶ We note, for example, that IT&E Wireless provides facilities-based service in both markets. See *supra*, n. 82.

⁸⁷ See Reply at 4 (“As a result of the high cost of connectivity between Guam and the Northern Marianas, wireless carriers that offer service in both places *typically* deploy separate switches.”) (emphasis added).

⁸⁸ The lack of license would not, of course, prevent TeleGuam from offering service through resold wireless minutes, but offering resale in the CNMI would not provide TeleGuam the opportunity to adopt a one-switch solution.

⁸⁹ For example, the charge for T-1 capacity is only \$7,143 per month. See <http://www.pticom.com/tariffs/plgfc.pdf> (listing rates for various capacities).

⁹⁰ See *supra* ¶ 2; see also Micronesian Telecommunications Corporation Application for a License to Land and Operate a High Capacity Digital Submarine Cable System Extending Between the Commonwealth of the Northern Mariana Islands and Guam, File No. S-C-L-92-003, *Cable Landing License*, 8 FCC Rcd 748 (Com. Car. Bur. 1993) (“*MTC Interisland Cable Landing License Order*”); *MTC Interisland Cable Section 214 Order*, 8 FCC Rcd 750 (authorizing construction and operation of the MTC Interisland Cable on a common carrier basis); *GST Telecom Order*, 12 FCC Rcd at 3611 ¶¶ 13-14 (noting that the MTC Interisland Cable is common carrier).

⁹¹ See 47 U.S.C. §§ 201(b), 208.

IV. CONCLUSION

32. We find that the public benefits of the assignment are significant, and that the assignment presents a minimal risk of harm to competition. We therefore conclude that the assignment will serve the public interest, convenience, and necessity, subject to the condition specified in paragraph 34 of this Order.

V. ORDERING CLAUSE

33. Accordingly, IT IS ORDERED that, pursuant to the authority granted in sections 4(i), 309(j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j), and 310(d), the Application for the Assignment of Personal Communications Service License WQCV808 (MTA 050) from Bell Atlantic New Zealand Holdings, Inc., to GTE Pacifica, Inc., now named PTI Pacifica, Inc., is GRANTED.

34. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(b), 310(d), consent to the assignment of Personal Communications Service License WQCV808 (MTA 050) to GTE Pacifica, now named PTI Pacifica, Inc., is subject to its compliance with the provisions of the Agreement between the Micronesian Telecommunications Corporation and Pacific Telecom Inc., and the Federal Bureau of Investigation, the U.S. Department of Justice, the U.S. Department of Defense, and the U.S. Department of Homeland Security, dated October 6, 2003, which is appended to the Order and Authorization adopted in IB Docket No. 03-115, 18 FCC Rcd 23140, Appendix B (2003). Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the Commission's implementing regulations.

35. IT IS FURTHER ORDERED that the Petition to Deny filed by TeleGuam Holdings, LLC, is DENIED.

36. This Order is issued pursuant to sections 0.51, 0.131, 0.261, and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.131, 0.261, and 0.331, and is effective upon release. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. See 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

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